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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

SVB FINANCIAL GROUP,

Plaintiff,

v.

FEDERAL DEPOSIT INSURANCE
CORPORATION, as Receiver for
Silicon Valley Bank and Silicon Valley
Bridge Bank, N.A.,

Defendants.

Case No. 5:24-cv-01321-BLF (VKD)

JOINT STIPULATION AND
[PROPOSED] ORDER PURSUANT TO
FRE 502

The Honorable Beth Labson Freeman
The Honorable Virginia K. DeMarchi

Pursuant to Civil Local Rule 7-12, SVB Financial Trust, as successor to SVB Financial Group (“SVBFT”), and Federal Deposit Insurance Corporation, as receiver for Silicon Valley Bank (“FDIC-R1”) and Silicon Valley Bridge Bank, N.A. (collectively, “FDIC-R”, and together with SVBFT, the “Parties”), submit this Stipulation and Order to resolve the Parties’ dispute regarding SVBFT’s assertion of an exclusive privilege, including with respect to attorney-client privilege and work product protections, (collectively, the “Exclusive Privilege”) over certain documents possessed by both SVBFT and FDIC-R1.

WHEREAS, upon Silicon Valley Bank’s (“SVB”) closure, FDIC-R1 succeeded by law to the rights of SVB as receiver;

WHEREAS, SVB Financial Group (“SVBFG”) was the parent corporation of SVB prior to SVB’s closure;

WHEREAS, following the closure of SVB, FDIC-R1 obtained possession of certain documents that were previously maintained at SVB (the “Historical Documents”);

WHEREAS, the Historical Documents are voluminous;

WHEREAS, SVBFG has asserted that it has an Exclusive Privilege over certain of the Historical Documents and FDIC-R1 has disputed SVBFG’s claims of Exclusive Privilege;

WHEREAS, SVBFG and FDIC-R1 have been engaged in a process involving the review and identification by SVBFG of those Historical Documents over which it contends it possesses an Exclusive Privilege with the oversight and involvement of the Court;

WHEREAS, on November 7, 2024, SVBFG’s Chapter 11 plan of reorganization became effective, resulting in SVBFG’s claims against FDIC-R1 being transferred to a liquidating trust, SVBFT, which is governed by a Liquidating Trust Board comprised of four members with no prior affiliation with SVBFG;

WHEREAS, SVBFT represents that pursuant to said Chapter 11 plan of reorganization, it succeeded to all privilege claims on the Historical Documents previously held by SVBFG;

WHEREAS on November 12, 2024, the Court entered the Parties’ Stipulated Protective Order (“SPO”) (Dkt. 102);

1 WHEREAS SVBFT expects to move to substitute itself for SVBFG as Plaintiff in this
2 action (the “Action”);

3 WHEREAS, SVBFG represents that its agreement to this Stipulation and Order shall be
4 binding upon SVBFT upon its substitution for SVBFG as Plaintiff in this Action;

5 WHEREAS, in order to facilitate the expeditious resolution of this action and avoid
6 burdening the Court with additional disputes concerning the review and logging or release of Historical
7 Documents, SVBFT has agreed to the release of all Historical Documents to FDIC-R1 subject to the entry
8 of an order pursuant to Federal Rule of Evidence 502(d);

9 WHEREAS, pursuant to Federal Rule of Evidence 502(d), the Court may enter an order
10 declaring that attorney-client privilege and work product protections are not waived by the disclosure of
11 documents or information during the course of litigation pending before the Court, and that such
12 disclosure shall not constitute a waiver of such privilege or protection in this action or any other federal
13 or state proceeding; and

14 WHEREAS, FDIC-R agrees that SVBFT’s release of Historical Documents constituting
15 or containing information protected by the Exclusive Privilege or any privilege held jointly by SVBFT,
16 as successor to SVBFG, and FDIC-R (the “Joint Privilege”) shall not constitute a waiver of the same;

17 and

18 THEREFORE, in order to protect any legal privilege, including the Exclusive Privilege
19 or Joint Privilege, afforded to documents and information for purposes of this Action, and pursuant to
20 the Court’s authority under Federal Rule of Evidence 502, the Parties hereby stipulate and submit as
21 follows:

22 1. **Non-waiver of the Parties’ right to assert privilege.** This Stipulation and Order
23 shall not constitute a waiver, or estoppel, or otherwise prevent or prejudice the Parties from asserting
24 any privilege, including the Exclusive Privilege or a Joint Privilege, in this or any other litigation.

25 2. **Non-waiver of privileges as to third parties.** The release of the Historical
26 Documents for review by FDIC-R shall not provide any third party with a basis to seek disclosure or
27 production of the Historical Documents based on waiver, abandonment, estoppel, prior disclosure, or
28 any other theory, claim, or argument. Pursuant to Federal Rule of Evidence 502(d) the release of

1 Historical Documents shall not waive any claim of privilege, including the Exclusive Privilege or Joint
 2 Privilege, in any other federal or State proceeding.

3 3. **No disqualification for viewing documents.** SVBFT may not seek to disqualify
 4 FDIC-R's in-house or outside counsel in this Action (together, "FDIC-R counsel") on the basis of any
 5 review of Historical Documents that FDIC-R counsel is entitled to review pursuant to this Stipulation
 6 and Order and has reviewed, regardless of whether SVBFT may later contend or the Court may later
 7 find that any reviewed Historical Documents are subject to an Exclusive Privilege. Although the Parties
 8 anticipate a separate agreement between them that would govern access to and use of the applicable
 9 Historical Documents outside of this Action, SVBFG and SVBFT agree here that FDIC-R counsel's
 10 review of documents in this Action consistent with this Stipulation shall not be a basis for
 11 disqualification in any other matter.

12 4. **Depositions and Trial.** The Parties further agree to the use of the Historical
 13 Documents in this Action in accordance with the following procedures:

- 14 a. **Depositions.** The Parties may use any Historical Documents in depositions in this
 15 Action, including any depositions taken jointly with the related action of Case No.
 16 23-cv-06543 (N.D. Cal.) ("Related Action"), subject to objection by counsel based on
 17 an exclusive privilege. In the event of such objection, the Parties may present the
 18 dispute to the Court, and the Parties agree in advance not to oppose recall of a
 19 deposition witness if such objection is overruled.
- 20 b. **Trial.** The Parties agree to meet and confer in good faith and present to the Court as
 21 necessary in advance of trial all privilege disputes essential to their respective cases.

22
 23
 24 (signatures on next page)

1 IT IS SO STIPULATED

2 Dated: December 10, 2024

3
4 /s Robert A. Sacks

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[PROPOSED] ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: _____

HON. VIRGINIA K. DEMARCHI
UNITED STATES MAGISTRATE JUDGE

FILER'S ATTESTATION

I, Stephen Sorensen, am the ECF User whose ID and password are being used to file this document. In compliance with Civil L.R. 5-1(i)(3), I hereby attest that all counsel listed above have concurred in this filing.

DATED: December 10, 2024

/s/ Stephen Sorensen
Stephen Sorensen